

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AFFYMETRIX, INC.,

Plaintiff/Counter-
Defendant,

v.

ILLUMINA, INC.,

Defendant/Counter-
Plaintiff.

C.A. No. 04-901-JJF

REDACTED

DECLARATION OF ROBERT J. LIPSHUTZ IN SUPPORT OF AFFYMETRIX, INC.'S OPPOSITION TO ILLUMINA INC.'S MOTION TO DISMISS COUNT 2 FOR LACK OF STANDING AND SUBJECT MATTER JURISDICTION

I, Robert J. Lipshutz, declare as follows:

1. I am Senior Vice President, Corporate Development and Emerging Markets for plaintiff Affymetrix, Inc. I have been employed continuously by Affymetrix since about April 1993. I have personal knowledge of all the facts contained in this declaration and, if called upon to do so, would and could testify competently thereto.
2. Prior to joining Affymetrix, I was employed by Daniel H. Wagner & Associates, a mathematics, software, and operations consulting firm. I joined Daniel H. Wagner & Associates ("Wagner") in 1981. At the time I left Wagner in 1993, I had the title of vice president.
3. In about December 1989, I met Dr. Stephen Fodor, then a scientist at Affymax Research Institute ("Affymax").¹ We discussed our common interests in

¹ Affymax Research Institute is also referred to as "ARI" in the agreements referenced below. Affymetrix spun off from Affymax in early 1993.

science and problem solving. Dr. Fodor later introduced me to other Affymax scientists and told me generally about ongoing research projects at Affymax.

4. We later discussed how Wagner might assist Affymax with math and software work relating to Affymax's projects. On or about May 3, 1990, Wagner entered into a Consultant Services Agreement with Affymax (the "1990 Agreement"). I signed the 1990 agreement on behalf of Wagner.

REDACTED

5.

REDACTED

6. On or about September 18, 1991, Wagner and Affymax entered into another Consultant Services Agreement (the "1991 Agreement").

REDACTED

7.

REDACTED

REDACTED

8. Wagner and Affymax entered into a subsequent Services Agreement on or about October 23, 1992 ("Services Agreement"). REDACTED

9.

REDACTED

10. During my deposition, I was only shown the Services Agreement.

REDACTED

11. I have now had a chance to review the 1990 and 1991 Agreements that I understand Wagner produced pursuant to a subpoena. These Agreements, as well as the Services Agreement, are consistent with my recollection that all work I performed as a consultant for Affymax (including specifically making any inventions) while employed by Wagner was to become the sole property of Affymax.

12. As I testified in my deposition,

REDACTED

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct. Executed April 3, 2006, in Santa Clara, California.


Robert J. Lipshutz

EXHIBIT 1

REDACTED

EXHIBIT 2

EXHIBIT 3

REDACTED

REDACTED

EXHIBIT 4

REDACTED

EXHIBIT B

REDACTED